

**Columbus and Greenville Railway**

P. O. Box 6000  
Columbus, MS 39703

2/13/788

**Cagy**  
Transportation

April 18, 2005

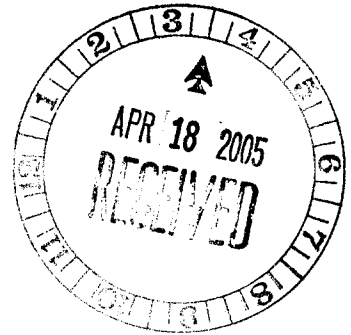
Hand Delivered

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K St. N.W.  
Washington, D.C. 20423

ENTERED  
Office of Proceedings

APR 18 2005

Part of  
Public Record



Re: Finance Docket No. 34666, Columbus and Greenville  
Railway Company – Verified Notice of Exemption – Acquisition and  
Operation of 2.99 Miles of Newly Constructed Track in Greenwood, Leflore  
County, Mississippi

Dear Secretary Williams:

Enclosed for filing please find the original and ten (10) copies of one document containing a Motion to Quash Discovery and a Motion to Deny Request for Leave to File a Reply to a Reply. Both motions directed to actions taken by Morris Recycling, Inc. in the captioned proceeding.

There is also enclosed a disk with the materials converted to a WordPerfect 5.1 format, an extra copy of this cover letter and the cover to the Response. Please stamp both the cover letter and the cover page and return to me in the self-addressed envelope provided.

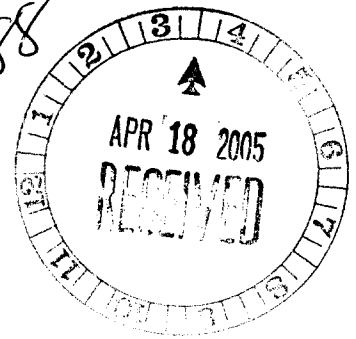
If there are any difficulties with the filing documents please contact me at 410-467-2028.

Yours truly,

*Wandaleen Poynter Cole*

Wandaleen Poynter Cole  
STB Counsel

2/3788



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

 **ORIGINAL**

ENTERED  
Office of Proceedings

APR 18 2005

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Public Record

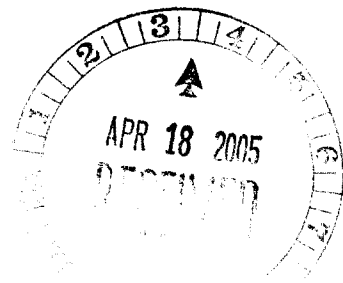
**COLUMBUS AND GREENVILLE RAILWAY COMPANY  
VERIFIED NOTICE OF EXEMPTION  
ACQUISITION AND OPERATION OF APPROXIMATELY 2.99 MILES OF  
NEWLY CONSTRUCTED TRACK IN GREENWOOD, LEFLORE COUNTY,  
MISSISSIPPI**

**Finance Docket No. 34666**

**Motion to Quash Discovery and  
Motion to Deny Request to Reply to Reply  
of Morris Recycling, Inc.**

Wandaleen Poynter Cole  
STB Counsel  
Columbus and Greenville Railway Company  
201 19<sup>th</sup> Street  
Columbus, Mississippi 39703

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



**COLUMBUS AND GREENVILLE RAILWAY COMPANY  
VERIFIED NOTICE OF EXEMPTION  
ACQUISITION AND OPERATION OF APPROXIMATELY 2.99 MILES OF  
NEWLY CONSTRUCTED TRACK IN GREENWOOD, LEFLORE COUNTY,  
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**Finance Docket No. 34666**

**Motion to Quash Discovery Request and  
Motion to Deny Request to Reply to Reply  
of Morris Recycling, Inc.**

**Motion to Quash Discovery Request**

Comes now Columbus and Greenville Railway Company ("C&G") and moves the request for Discovery presented by Morris Recycling, Inc. ("Morris") be quashed. Discovery is not allowed in this proceeding under 49 C.F.R. §1114.21. This is an informal proceeding that does not require resolution after a hearing on the record.

**Motion to Deny Request to Reply to Reply**

Further, the Morris Request for Leave to file a Reply to a Reply ("Request") must be denied. C&G was responding to a Motion to Stay or Revoke not participating in a formalized modified procedure that does not exist. Morris appears to be attempting to change the nature of this proceeding and thereby circumvent the clear intent of 49 U.S.C. 10902. Since the nature of the docket requires the submission of limited information it

should come as no surprise to Morris that it would get information not available to it initially. C&G's material was responsive. Virtually all of the materials submitted in Reply to the Morris request for stay or revocation deal with an Environmental and Historical Assessment that C&G suggests is more appropriately within the expertise of the STB environmental staff than that of Morris.

The filing raises no new issues or arguments relating to a basis for stay (appropriate only if a party is seeking judicial review, 49 C.F.R. §1115.5) or revocation. While the filing confirms through affidavit that Morris has not shipped on C&G at any location for approximately three years (see affidavit of Mr. Minga) and therefore supports C&G's position that Morris is without standing in this docket, there is no basis presented in the Request to support changing the nature of the proceeding. Even if this was a modified procedure, and it is not, there is nothing in the Request that would justify the extraordinary step of allowing a Reply to a Reply. There is certainly nothing in the Request that justifies any further activity in this **extremely limited Class III Railroad exemption docket**.

A Verified Statement to support C&G's Motion to Deny the Morris Request is attached. As shown in Mr. Bell's statement, C&G respectfully observes that much of Mr. Minga's Verified Statement is misleading. Most significantly service was not denied to Morris. The draft verified statement was presented to allow C&G to determine whether it would file a Verified Notice of Exemption to Abandon or follow other, more formal process, through the procedures of the STB. Morris did not respond. Morris, or the

shipper-owner of the cars, requested that the cars be placed at a different location. C&G acted as it was directed to do.

It must be noted that there were two outstanding questions that needed to be answered: 1) will Morris begin shipping again and 2) will Morris pull the cars into its facility. Neither question was answered. C&G is anxious to seek abandonment authority on the City line from the STB. It continues to be delayed by the demands of this docket. Morris will have its opportunity to approach the STB in that proceeding.

Wherefore, Columbus and Greenville Railway Company formally moves that the Morris Recycling, Inc. request for Discovery be quashed as unavailable under 49 C.F.R §1114.21; and further, that the Request of Morris to file a Reply to a Reply be denied, also as unavailable under the Procedural Rules of the Surface Transportation Board.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Wandaleen P. Cole". The signature is fluid and cursive, with a large initial 'W'.

Wandaleen Poynter Cole  
STB Counsel  
Columbus and Greenville Railway Company  
201 19<sup>th</sup> Street North  
Columbus, Mississippi 39703

## CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2005, a copy of Columbus and Greenville Railway Company's Motions to Quash Discovery and to Deny a Request for Leave to file a Reply to Reply, both replies to Morris Recycling, Inc., was served by First Class Mail, and facsimile, on:

Jeffrey O. Moreno  
Thompson Hine LLP  
1920 N Street, N.W.  
Suite 800  
Washington, D.C. 20036-1600

Michael H. Higgins  
Thompson Hine LLP  
1920 N Street, N.W.  
Suite 800  
Washington, D.C. 20036-1600

A handwritten signature in cursive script, reading "Wandaleen P. Cole", is written over a horizontal line.

Wandaleen Poynter Cole

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**COLUMBUS AND GREENVILLE RAILWAY COMPANY  
VERIFIED NOTICE OF EXEMPTION  
ACQUISITION AND OPERATION OF APPROXIMATELY 2.99 MILES OF  
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**Finance Docket No. 34666**

**VERIFIED STATEMENT**

**ROGER BELL, President and CEO  
Columbus and Greenville Railway Company**

I, Roger Bell, being duly sworn state that I am President and Chief Executive Officer of the Columbus and Greenville Railway Company ("C&G"). In that capacity I am qualified to respond to the Verified Statement of James M. Minga, given on behalf of Morris Recycling Inc. ("Morris") on April 13, 2005, and filed to support a request for leave to file a reply to a reply in the captioned proceeding.

The draft verified statement I presented to Mr. Minga was prompted by C&G receiving notice to spot two cars at the Morris facility in Greenwood, Mississippi. No cars had been shipped to or from the location for almost three years; a fact confirmed by Mr. Minga in his statement. C&G was in the process of preparing to file with the Surface Transportation Board to abandon the line and it was essential that we know what the shipping plans of Morris at the location were for the future. Since there had been a

significant period of time since Morris had used C&G's services it was assumed that the two cars were an aberration and not an indication of future shipping plans. That is the only reason the draft was written to indicate that Morris did not intend to use rail service in the future. There was not a question of whether C&G would file for abandonment. C&G simply needed to know which provision of the Code of Federal Regulations would apply.

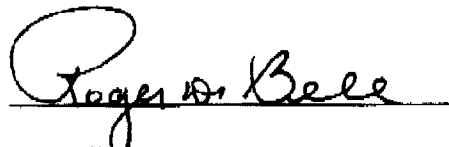
C&G also needed to have agreement from Morris that it would pull the cars into its facility. Cars had not moved on the Morris owned tracks for a long period of time and a safety issue was obvious. C&G's track foreman did not tell any Morris representative that the track was adequate for car placement by C&G. The only check made was of the gage. The track was in gage but not adequate to chance the movement of a heavy locomotive. A derailed car is a difficult situation, but the derailment of a locomotive is a significant operating problem. I asked about the weight of the cars after loading and was informed they would be relatively light at 60,000 pounds, I therefore offered to place and pickup the cars at a location further into the facility than I had originally considered safe. I did not tell any Morris representative that it could not ship or receive on the line. I assume Mr. Minga is saying in his statement that Morris would not be able to ship or receive after the abandonment was consummated.

Morris did not challenge the correctness of the content of the draft statement or in any other manner communicate to C&G what it intended. C&G was simply notified by the originator of the cars, not by Morris, that the cars would be placed at a new location. (see, attachment to this statement). Since I was personally working with Mr. Minga I can state without hesitation that Morris made its own election not to receive the two cars.

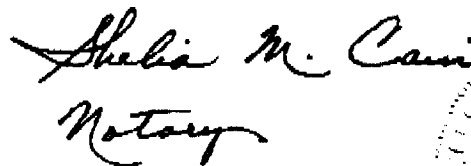


Further, while it is true that I personally never spoke with Mr. Minga about abandonment plans, it is difficult to understand why he was unaware. I know the local Morris office personnel had been fully apprised as well as at least one owner, James Morris, by C&G's marketing representatives and Leflore County representatives, early in the planning process. Local Morris representatives would be fully knowledgeable of the relocation plans based solely on reports in the local newspaper. The planned relocation of C&G's tracks has not been a secretive process.

It is also significant to note that there were numerous discussions about protecting the Morris facility in the early planning stages of the relocation project. However, by the time the project plans had matured, Morris could no longer be classified as a shipper.



Roger Bell  
President and CEO  
Columbus & Greenville Railway Company



Notary  
Notary Public State of Mississippi At Large  
My Commission Expires: June 23, 2006  
Bonded Thru Heiden, Brooks & Garland, Inc.




**FAX Transmission**

## RETURN FAX REQUESTED

**From:** E. Gordon (Gus) Ellicott, Jr.  
 Keywell L.L.C.  
 11900 S. Cottage Grove Ave., Chicago, IL 60628  
**Phone:** (773) 660-2060 X229 **Fax:** (773) 466-7452  
**Date:** March 4, 2005 **Time:** 12:49:00 PM  
**To:** BILLING

<b>Car Number:</b> 2 KEYX CARS BELOW	<b>Bill of Lading Date:</b> March 4, 2005	
<b>Rail Destination:</b> SHERMAN, MS	<b>Origin:</b> CAGY	
<b>Consignee:</b> MORRIS SCRAP METAL	<b>Shipper:</b> KEYWELL L.L.C.	
<b>Route:</b> GRND-CN-Memphis-BUSF CAGY (COLUMBUS) BN-		per Gus Ellicott 3/4/05 12:50 PM EY
<b>EMPTY PRIVATE CAR</b>		

KEYX 5109 & KEYX 2005

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